

JUL 10 2003

NOT FOR PUBLICATION

**UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT**

**CATHY A. CATTERSON
U.S. COURT OF APPEALS**

UNITED STATES OF AMERICA,

Plaintiff - Appellant,

v.

LENNY KONG, dba Gongs Market &
Hardware,

Defendant - Appellee.

No. 02-10167

D.C. No. CR-00-00956-RCC
District of Arizona, Tucson

ORDER

Before: SCHROEDER, Chief Judge, NOONAN and CLIFTON, Circuit Judges.

The memorandum disposition filed on January 23, 2003, is amended as follows:

1. On page 2, at the end of the second paragraph, insert the following:
“This standard applies even when the informant is available. See United States v. Montgomery, 998 F.2d 1468, 1473-74 (9th Cir. 1993)(applying “reasonable efforts” standard when informant was available for 22 of the 23 days the government was obligated to produce him); United States v. Tornabene, 687 F.2d 312, 314-15 (9th Cir. 1982)(applying “reasonable efforts” standard when

government had met with informant, and knew informant's phone number, during the period it was obligated to produce him).”

2. On page 2, last line, replace the word “testify” with “be interviewed.”

With the foregoing amendments to the memorandum disposition, the panel has voted to deny the petition for rehearing. Chief Judge Schroeder and Judge Clifton have voted to deny the petition for rehearing en banc and Judge Noonan so recommends.

The full court has been advised of the petition for rehearing en banc and no judge has requested a vote on whether to rehear the matter en banc. Fed. R. App. P. 35.

The petition for panel rehearing and the petition for rehearing en banc are DENIED. No further petitions for rehearing will be accepted in this case.